IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WA.No. 618 OF 2007(B)

AGAINST THE JUDGEMENT IN WPC.18701/2006 Dated 30/01/2007
.....

APPELLANT: PETITIONER

J.RAVEENDRA RAJU, NIDHIN BHAVAN,
KUSAVARKONAM, VENPAKAL P.O.,ARALUMOODU(VIA),
THIRUVANANTHAPURAM-695123.(ADDITIONAL REGISTRAR OF
CO-OPERATIVE SOCIETIES, SECRETARY. KERALA STATE
CO-OPERATIVE EMPLOYEES PENSION BOARD,
THIRUVANANTHAPURAM-695 001(FORMER).

BY ADV. SRI.B.RAGUNATHAN
SRI.V.V.MATHEW

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, CO-OPERATION DEPARTMENT,
GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM-695001.

2. REGISTRAR OF CO-OPERATIVE SOCIEITIES,
THIRUVANANTHAPURAM-695001.

SPL. GOVT. PLEADER SMT. A.G. ANEETHA.

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 13/03/2007, ALONG WITH W.AP. 619/2007, THE COURT ON 29/03/2007 DELIVERED THE FOLLOWING:

P.R. RAMAN & ANTONY DOMINIC, JJ.

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retirement was also not acceded to. Subsequently, he made a representation to cancel the leave applied for and to substitute the application for leave from 17.5.2006 to 30.6.2006. He filed the writ petition for a writ of certiorari calling for Ext.P3 and to quash the same. Ext.P3 is the proceedings issued by the Government of Kerala, under date 14.7.2006, keeping him under suspension. It reads that the appellant applied for leave preparatory to retirement for the period from 17.5.2006 to 30.9.2006 whereas he was due to retire on 30.9.2006 and he suo moto relinquished the charge of the post. Since he was facing disciplinary action in another case he could avail of leave and relinquish charge only after getting permission/sanction of the leave applied for from Government, his action in taking leave preparatory to retirement without authorization of Government and relinquishing the charge of the post he was holding can only be considered as a pre-decided attempt to evade from the disciplinary proceedings already initiated against him and his action amounted to grave misconduct and dereliction of duty which warranted stringent action against him. The disciplinary action as referred to in Ext.P3 has already culminated in Ext.P6 order dated 10.5.2005, produced in W.P.(C) 27881/2006. That was in respect of a charge levelled against him as per Ext.P3 produced in the said writ petition, in that he relieved on A.V.Divakaran, Joint Registrar of Co-operative Societies who was under

disciplinary action for unauthorized absence, without the knowledge or permission of the Government or the Registrar of Co-operative Societies. Thus, the charge that another officer was relieved by the appellant herein at a time when disciplinary action was pending against the said incumbent is the subject matter of the charge. He submitted his explanation and finally Ext.P6 order was passed as noticed above which reads as follows:

> ".....Having examined the case in detail and taking a lenient view Government have decided to impose on you a minor penalty of censure under Rule 11(1) of KCS & C.C.A. Rules (Part-V). If any representation in the matter is to be submitted, the same may be forwarded to Government within fifteen days of the receipt of the communication."

3. Even though Ext.P6 proposes punishment and had given the appellant an opportunity, it appears that he has not submitted any such explanation. However, no order confirming the punishment pursuant to Ext.P6 is seen issued yet, which has necessarily to be done.

4. It was subsequently that he was suspended as per Ext.P3 order dated 14.7.2006 produced in W.P.(C) 18701/2006 to which reference is already made. However, Ext.P3 is not for the same charge which culminated in Ext.P6 produced in W.P.(C) 27881/2006, to which also reference is already made. In the order of suspension issued, it is alleged that his action in submitting leave application as preparatory to retirement and without authorization of the Government and relinquishing the charge

of the post was considered as a pre-determined attempt on his part to evade disciplinary action which amounts to a grievous misconduct. As already noticed, this order of suspension was issued on 14.7.2006 and he has retired from service on 30.9.2006. As regards his application for leave submitted pursuant to the direction issued in W.P.(C) 17396/2006 dated 7.8.2006, the Government has already passed orders as per G.O.(Rt) 443/06/Co-op. dated 10.10.2006 produced as Ext.P1 in W.P.(C)27881/2006 by which the Government declined his request and decided not to entertain the leave application submitted by him. The leave application was thus rejected.

5. The appellant sought to quash Ext.P1 rejecting his leave application and for other consequential reliefs in W.P.(C) 27881/2006. On the other hand, in W.P.(C) 18701/2006, his prayer is for quashing the order of suspension Ext.P3 produced in that case. As respect the relief sought for in W.P.(C) 18701/2006, we need only say that Ext.P3 order of suspension could not continue beyond his retirement on 30.9.2006. But his prayer to quash Ext.P3 cannot be granted since he was kept under suspension proposing a disciplinary action regarding his conduct in applying for leave and relinquishing of charge without proper sanction, especially in the light of the disciplinary action pending against him, with reference to relieving of another incumbent. Therefore, the validity or otherwise of the order of

suspension issued will depend upon the final action, if any, to be taken pursuant to the order of suspension issued on the allegation referred to in the order of suspension issued. It is true that order of suspension issued do relate to the charge of relieving Divakaran since in respect of the said charge, a proposal for punishment was already issued to him under date 10.2.2005 and Ext.P3 order of suspension which was issued only on 14.7.2006 cannot and does not in fact pertain to the said charge. At the same time, Ext.P3 refers to a different charge, namely, regarding his action of submitting leave application preparatory to retirement and without authorization of Government and relinquishing the charge he was holding. Therefore, at this stage, the prayer to quash Ext.P3 cannot be granted. We find no error in the judgment as it relates to Ext.P3 order of suspension. However, pursuant to the order of suspension, no charge sheet as such is issued and if any action is in contemplation, the Government has to expedite such action and complete the proceedings as already directed by the learned Single Judge in the judgment impugned in this appeal.

6. As far as the prayer made in W.P.(C) 27881/2006 is concerned, it is against the order Ext.P1 dated 10.10.2006 by which Government found that his application for leave was found to be irregular since a decision from the disciplinary authority was essential and pre-requisite for sanctioning the leave in case of an employee facing disciplinary action. The contention of

the petitioner was that no proceedings of any nature either judicial or departmental is pending against him as on the date of Ext.P1.

According to him, proceedings initiated has already culminated in Ext.P6. But, as already noticed, Ext.P6 only proposes a punishment requiring the petitioner to submit his representation in the matter. Hence, the final order pursuant to Ext.P6, certainly, is contemplated either accepting his representation or rejecting the same and confirming the punishment etc. Therefore, we cannot accept the contention that there was no disciplinary action pending since unless and until a final order of punishment pursuant to Ext.P6 is issued in law, it must be deemed as not finally completed in all respects. In such circumstances, the contention is without any merit.

7. Admittedly by proceedings dated 20.10.2006, produced as Annexure A1 in W.A. 618/2007, Government provisionally decided to enhance the punishment by way of Censure besides alleging various other misconduct on his part and decided to take action under Rule 59 (b), Part-III K.S.Rs. Accordingly, a decision was taken to effect a permanent reduction of Rs. 1000/- from his monthly pension. He had been accorded an opportunity of being heard in the matter. According to the petitioner, he has already submitted an explanation thereto which will clearly show that the action proposed against the petitioner has not been finalized yet.

8. The learned Single Judge has already directed, by the impugned judgment, to complete all such disciplinary action, if any, pending within a time frame. By Ext.P1 impugned in W.P.(C) 27881/2006, his application for leave has already been rejected. Pursuant to the order of suspension issued, if any further action in contemplation of the rules is warranted, necessarily the same has to be completed and orders passed regularizing the suspension period in accordance with Rule 56 Part I of the Kerala Service Rules. This shall be done as directed by the learned Single Judge and since the petitioner has already retired and his pension is not yet paid, the same shall also be looked into and needful be done, expeditiously within one month from the date of receipt of the copy of this judgment.

The writ appeals are disposed of as above.

P.R. RAMAN,
(JUDGE)

ANTONY DOMINIC,
(JUDGE)

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